

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

B.K. TSE,

Plaintiff,

v.

ARNOLD CHIN, *et al.*,

Defendants.

CASE NO. C22-0088-JCC

ORDER

This matter comes before the Court upon *sua sponte* review of Plaintiff's complaint (Dkt. No. 6) under 28 U.S.C. § 1915(e)(2)(B). Plaintiff, proceeding *pro se*, filed an application to proceed *in forma pauperis* with his complaint. (Dkt. No. 1.) On February 3, 2022, the Honorable Michelle L. Peterson, United States Magistrate Judge, granted Plaintiff's motion. (Dkt. No. 5.) Summons has not yet issued.

A complaint filed by any person seeking to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a) is subject to *sua sponte* review and dismissal by the court to the extent it is "frivolous, malicious, fail[s] to state a claim upon which relief may be granted, or seek[s] monetary relief from a defendant immune from such relief." 28 U.S.C. § 1915(e)(2)(B); *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir.2001) ("[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners."). This power to *sua sponte* dismiss the complaint may be invoked "at any time" the court finds that the plaintiff has failed to state a claim. *Teahan v. Wilhelm*, 481 F.

1 Supp. 2d 1115, 1119 (S.D. Cal. 2007) (citing § 1915(e)(2)(B)(ii)).

2 To avoid dismissal for failure to state a claim upon which relief may be granted, a
3 complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that
4 is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 664 (2009). The factual allegations must
5 be “enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*,
6 550 U.S. 544, 555 (2007). The complaint may be dismissed if it lacks a cognizable legal theory
7 or states insufficient facts to support one. *Zixiang v. Kerry*, 710 F.3d 995, 999 (9th Cir. 2013).

8 The Court holds *pro se* plaintiffs to less stringent pleading standards than represented
9 plaintiffs and liberally construes a *pro se* complaint in the light most favorable to the plaintiff.
10 *Erickson v. Pardus*, 551 U.S. 89, 93 (2007). Nevertheless, section 1915(e) “not only permits but
11 requires a district court to dismiss an *in forma pauperis* complaint that fails to state a claim.”
12 *Lopez*, 203 F.3d at 1229. When dismissing a complaint under section 1915(e), the Court gives
13 *pro se* plaintiffs leave to amend unless “it is absolutely clear that the deficiencies of the
14 complaint could not be cured by amendment.” *Cato v. United States*, 70 F.3d 1103, 1106 (9th
15 Cir. 1995).

16 Here, it is clear that Plaintiff’s complaint fails to state a claim upon which relief can be
17 granted. Although the Court construes his pleadings liberally, even a “liberal
18 interpretation. . . . may not supply elements of the claim that were not initially pled.” *Ivey v. Bd.*
19 *of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir.1982).

20 Plaintiff filed a *pro se* “Third-Party Complaint” form. (Dkt. No. 1-1 at 1.) But a third-
21 party complaint does not commence a new action. Rather, it allows a defendant to become a sort
22 of plaintiff itself (called a “third-party plaintiff”) by serving a summons and complaint on a non-
23 party who the third-party plaintiff believes should be held responsible for all or part of the claim
24 against the third-party plaintiff (*i.e.*, the original defendant) in an existing action. *See Fed. R.*
25 *Civ. P. 14(a)(1)*. This complaint ostensibly should have been filed and served in an existing case
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1 where Plaintiff is the original defendant.¹

2 Further, Plaintiff's complaint lacks supporting facts or a cognizable legal theory. Plaintiff
3 states that "[c]ondominium sold at one half market value due to damages incurred by unauthorized
4 Third-Party Defendant of fraudulent security clearance." (Dkt. No. 1-1 at 4.) This is all but
5 incomprehensible because it is not clear what events Plaintiff is describing, if any, what parties he
6 alleges were involved in such acts, or how this information entitles Plaintiff to relief. As it is
7 absolutely clear the complaint could not be cured by amendment, the Court declines to grant leave
8 to amend it. *See Cato*, F.3d at 1106.

9 Based on the forgoing, the Court DISMISSES Plaintiff's complaint with prejudice.

10 DATED this 11th day of March 2022.

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A handwritten signature in black ink, reading "John C. Coughenour", is written over a horizontal line.

John C. Coughenour
UNITED STATES DISTRICT JUDGE

25 ¹ The form includes reference to the number "KCSC 07-28633-2sea," which could be a King
26 County Superior Court case number, but there is not enough information for the Court to
conclusively discern its relevance. (Dkt. No. 1-1 at 4.)